

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

UNITED STATES OF AMERICA, )  
                                  )  
Plaintiff,                    )  
                                  )  
vs.                            ) Case No.: 4:18-cr-739 AGF (SPM)  
                                  )  
LAMAR MCDONALD,            )  
                                  )  
Defendant.                    )

**DEFENDANT'S REPLY TO GOVERNMENT'S RESPONSE TO DEFENDANT'S FIRST  
MOTION TO REOPEN DETENTION HEARING**

COMES NOW Defendant, Lamar McDonald, by and though counsel, and files the following Reply to the Government's Response to Defendant's First Motion To Reopen Detention Hearing.

1. First, as an alternate to 18 U.S.C. §3142(f)(2), this Court can rely on 18 U.S.C. § 3142(i) to order Defendant's "temporary release" from custody for "compelling reason[s]."
2. Second, in contrast to the Government's claim, Defendant still maintains that he does not pose a danger to the safety of any other person or the community, as he did in his Motion to Revoke Detention Order, *see* Doc Text #218, and at each hearing related to his detention.
3. Third, as he argued in that same motion and at each hearing, Defendant claims that he has provided sufficient evidence to carry the burden of production placed on him in connection with § 3142(f)(1)'s presumption of detention, *see id.*, and, in fact, has overcome that presumption – a conclusion shared by this Court in its Order of Detention Pending Trial. *See* Doc. Text #203 at 2.

4. Fourth, according to American Diabetes Association, diabetics “face a higher chance of experiencing serious complications from COVID-19.” *See* American Diabetes Association, COVID-19 (Coronavirus), available at <http://www.diabetes.org/coronavirus-covid-19>.
5. The Government downplays McDonald’ risk as a Type II diabetic.
6. Fifth, “[a]ccording to a report from Italy’s National Institute of Health released on March 17, 99% of COVID-19 patients who have died in the country have at least one preexisting condition.” Business Insider, 10 Common Health Conditions That May Increase Risk Of Death From The Coronavirus, Including Diabetes And Heart Disease (March 23, 2020), available at <https://www.businessinsider.com/hypertension-diabetes-conditions-that-make-coronavirus-more-deadly-2020-3>.
7. 76.1% of those patients “had hypertension, or high blood pressure,” *id*, a condition with which McDonald lives and which the Government’s response ignores.
8. Similarly, COVID-19 “attacks the kidneys, not just the lungs,” and “kidney involvement seems to be frequent in people who have tested positive for and developed symptoms” of the virus. CathLabDigest, Are Kidneys Targeted By The Novel Coronavirus? (March 13, 2020), available at <https://www.cathlabdigest.com/content/are-kidneys-targeted-novel-coronavirus>.
9. The Government’s response ignores this condition, too.
10. Sixth, the COVID-19 pandemic represents an extraordinary circumstance.
11. Indeed, the President of the United States declared the pandemic a national emergency eleven days ago. *See* Proclamation on Declaring a National Emergency Concerning The Novel Coronavirus Disease (COVID-19) Outbreak (March 13 2020), available at

<https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/>.

12. In response to this national emergency, legislators, non-profit organizations, and federal and state defenders have asked prisons and jails to take the necessary steps to protect the most vulnerable members of the prison and jail population. *See, e.g.*, Bipartisan Group of Senators Write To DOJ and BOP To Urge Taking “Necessary Steps” To Protect Most Vulnerable Prison Staff And Inmates, Sentencing Law & Policy (March 24, 2020), available at <http://www.sentencing.typepad.com>; High Profile Inmate And New Jersey Release Order Highlight Another Remarkable Night For The Coronavirus, Sentencing Law & Policy (Marc 23, 2020), available at <http://www.sentencing.typepad.com>; Federal Defenders Urge Justice Department To Take Specific Immediate Steps In Response To Coronavirus Outbreak, Sentencing Law & Policy (March 20, 2020), available at <http://www.sentencing.typepad.com>.
13. McDonald is among this population because of his several conditions, and his release to home detention, temporary or otherwise, will not pose a threat to the safety of any other person or the community under the conditions of release he proposes - 24 hour electronic monitoring, a property bond secured by the almost \$100,000 in equity he and his wife have in their home, cash in the amount of ten percent of \$20,000 to \$50,000, no contact with any witness or co-defendant in the case, and any other condition this Court thinks appropriate.
14. The federal government, state governments, and private industry have taken extraordinary steps to protect those in their care, vulnerable or otherwise, from exposure to COVID-19.

15. They have not waited for the virus to take hold to act.

16. For COVID-19 vulnerable, non-violent offenders whose flight risk is remote, courts should do the same, at least where as here the proposed conditions of release prove substantial.

WHEREFORE, Defendant respectfully requests this Court either reopen his detention hearing under 18 U.S.C. § 3142(f)(2) or temporarily release him from custody for compelling reasons under 18 U.S.C. § 3142(i) and pursuant to the combination of conditions of release he proposes.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on March 24, 2020, the foregoing was electronically filed with the Clerk of the Court to be served by operation of the Court's electronic filing system upon Ms. Carrie Costantin, Assistant United States Attorney.